

canola/oilseed rape for claim 98, CaMV35S for claim 100, tac for claim 102,  $\beta$ -conglycinin 7S promoter for claim 104, 3-hydroxyhexanoic acid for claims 127 and 131, 3-hydroxydodecanoic acid for claim 132 and 3-hydroxyhexadecatrienoic acid for claim 133.

The Examiner's reasoning in this regard that claims 84, 86, 92, 98, 100, 102, 104, 113, 115, 119, 124, 126-127 and 131-133 contain patentably distinct species is not quite correct. Claims 82-133 can be grouped as follows: Claims 82-90 are directed to a recombinant host cell. Claims 91-96 are drawn to a genetically transformed plant cell. Claims 97-108 are drawn to a genetically transformed plant. Claims 109-115 are drawn to a method of preparing host cells. Claims 116-120 are drawn to a method of preparing a transformed plant. Claims 121-127 are drawn to a method for preparing a polyhydroxyalkanoate by a cell. Claims 128-132 are drawn to a method for preparing polyhydroxyalkanoate by a cell. Claim 133 is directed to a polyhydroxyalkanoate.

The recited limitations in claim 82, which are 1) a nucleic acid sequence encoding a peroxisome targeting protein subunit and 2) a nucleic acid sequence encoding a polyhydroxyalkanoate synthase protein subunit, are **shared** by each of the species which is within the scope of each of claims 82-90. Each species of a genus or a subgenus is a specific embodiment of claim 82. Similarly, claim 91 recites elements meeting the requirements provided therein a) a promoter, b) structural nucleic acid sequence, c) a 3' transcription terminator sequence, and d) a 3' polyadenylation signal sequence which are **shared** by each of the species which is within the scope of each of claims 91-96. Each species of a genus or subgenus is a specific embodiment of claim 91.

Claims 97 recites elements meeting the requirements provided therein a) a promoter, b) structural nucleic acid sequence, c) a 3' transcription terminator sequence, and d) a 3' polyadenylation signal sequence which are **shared** by each of the species which is within the scope of each of claims 97-108. Each species of a genus or subgenus is a specific embodiment of claim 97. Likewise, each species which is within the scope of each of claims 109-115 shares

the limitations cited in claim 109. Each of the species of a genus or subgenus is a specific embodiment of claim 109. Similarly, each of the species which is within the scope of each of claims 116-120 shares the limitations cited in claim 116 and, therefore, is a specific embodiment of claim 116.

The limitations recited in claim 121 are **shared** by each of the species which is within the scope of each of claims 121-127. Each of the species of a genus or subgenus is a specific embodiment of claim 121. The limitations recited in claim 128 are **shared** by each of the species which is within the scope of each of claims 128-132. Each of the species of a genus or subgenus is a specific embodiment of claim 128. Likewise, each of the species listed in claim 133 shares a common attribute that each of the monomer species can form a polyhydroxyalkanoate in the plant.

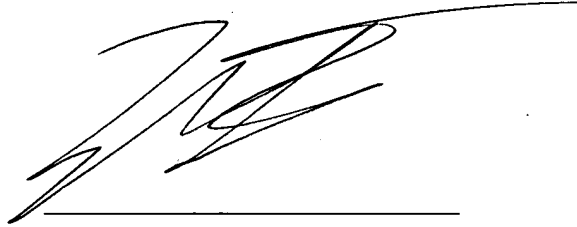
For a specific claim which recites particular properties as limitations (i.e., a 3' transcription terminator sequence in claim 97), the claimed properties are selected only because each species in that claim shares the properties. Therefore, the question of whether a particular species is elected is largely irrelevant.

In determining whether to require an election of species on the basis that the species in a claim are either independent or distinct, the Examiner has to ascertain that the claims to be restricted are drawn to different species which are mutually exclusive (MPEP § 806.04(f)). The Examiner needs to ascertain that one claim recites limitations which are found in a first species but not in a second species and vice versa (MPEP § 806.04(f)). As discussed above, the recited limitations in each group of the claims are shared by each of the species in that group. Therefore, the species in a specific claim of the present application are not distinct (MPEP § 806.04(f)), and, thus, the election requirement is not proper (MPEP § 803).

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Allowance of claims 82-133 is therefore earnestly solicited. A copy of the claims as amended and a clean copy of the pending claims are attached in the appendices.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Zhaoyang Li', written over a horizontal line.

Zhaoyang Li

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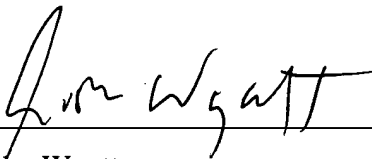
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I hereby certify that this paper, along with any paper referred to as being attached or enclosed, is being deposited with the United States Postal Service on the date shown below with sufficient postage as first-class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

  
Aisha Wyatt

Date: June 14, 2001